



महाराष्ट्र शासन राजपत्र

असाधारण भाग चार-क

वर्ष ३, अंक ३४]

गुरुवार, ऑगस्ट ३, २०१७/श्रावण १२, शके १९३९

[पृष्ठे २ किंमत : रुपये ९.००

असाधारण क्रमांक ४२

प्राधिकृत प्रकाशन

महाराष्ट्र शासनाव्यतिरिक्त इतर वैधानिक प्राधिकाऱ्यांनी तयार केलेले

(भाग एक, एक-अ व एक-ल यांमध्ये प्रसिद्ध केलेले वैधानिक नियम व आदेश यांव्यतिरिक्त इतर)

वैधानिक नियम व आदेश ; यात भारत सरकार, उच्च न्यायालय, पोलीस आयुक्त, आयुक्त (राज्य उत्पादन शुल्क),
जिल्हादंडाधिकारी व निवडणूक आयोग, निवडणूक न्यायाधिकरण, निवडणूक निर्णय अधिकारी व निवडणूक आयोगाखालील
इतर प्राधिकारी यांनी तयार केलेले वैधानिक नियम व आदेश यांचा समावेश होतो.

BEFORE THE GOVERNOR OF MAHARASHTRA

In Re.— Petition under article 192 (1) of the Constitution of India by Adv. Ashish Giri, Mumbai regarding alleged disqualification of Shri Dhananjay Panditrao Munde, Member of the Maharashtra Legislative Council under article 191(1)(e) of the Constitution of India read with section 8(3) of the Representation of the People Act, 1951.

Order

The petition dated 6th April 2015 received from Adv. Ashish Giri, Mumbai under Article 192(1) of the Constituion of India, alleging that Shri Dhananjay Panditrao Munde, Member of the Maharashtra Legislative Council, has incurred disqualification under Article 191(1)(e) of the Constitution of India read with section 8(3) of the Representation of People Act, 1951, which provides for disqualification by or under any law made by Parliament and disqualification on conviction for certain offences, respectively. The petitioner has also alleged that Shri Dhananjay Panditrao Munde, Member of the Maharashtra Legislative Council has violated Rules 252, 253 and 254 of the Maharashta Legislative Council Rules, 2009 for his failure to intimate the Chairman of the Maharashtra Legislative Council about his arrest on 13th March, 2014 by the Superintendent (Service Tax) and the bail order dated 13th March, 2014.

2. The petitioner has contended that Shri Dhananjay Munde, Member of Maharashtra Legislative Council is liable to be disqualification under section 8(3) of the Representation of the People Act, 1951 on the grounds of being convicted for an offence punishable under section 89(1)(i) of the Finance Act, 1994 read with Service Tax Rules, 1994 for failure of payment of Service Tax and for violation of Article 252, 253 and 254 of the Maharashtra Legislative Council Rules, 2009.

3. As required by the provisions of Clause (2) of Article 192 of the Constitution, the question of the alleged disqualification was referred to the Election Commission of India for its opinion.

4. The Commission observed that, section 8(3) of the Representation of People Act, 1951 states that a person shall be disqualified if he is convicted and sentenced to imprisonment for a period of not less than two years, for any offence other than those mentioned under sub-sections (1) and (2) of the said section 8. The pre-requisites for disqualification under section 8(3) are conviction and imprisonment for a minimum term of two years. The Commission also observed that, the purpose of disqualification under section 8(3) of the Representation of the People Act, 1951 is to prevent persons who have been convicted of certain offences to enter politics, thereby asserting that conviction is *sine qua non* for disqualification under section 8(3) (*See K. Prabhakaran versus Jayarajan, AIR 2002, SC 3393*).

5. The Commission pointed out that, it is well settled and recognised through a catena of judgements of the Hon'ble Supreme Court that disqualification under section 8(3) of the Representation of the People Act, 1951 arises only on conviction (*See Raghbir Singh versus Surjit Singh, 1994 Supp (3) SCC 162 and Lily Thomas versus Union of India and Ors., (2013) 7 SCC 653*).

6. The Commission also observed that, bare reading of section 91(1) of the Finance Act, 1994 shows that a person can be arrested if there is a reason to believe that he has committed an offence under section 89(1) of the Act. The Commission referred to the decision of the Bombay High Court in *Clear Trip Private Ltd. and Ors. versus Union of India and Ors., (2016) 288 CTR (Bom) 515*, in this connection wherein it is held that, the arrest under section 91 arises on launching the prosecution, that is, a person can be arrested before he is convicted of an offence under section 89 of the Finance Act, 1994.

7. The Commission, thus established that a person can be arrested under section 91 of the Finance Act, 1994 after prosecution is launched against him, and before his conviction. Hence, the Commission rejected the contention of the petitioner that the arrest memo of 13th March 2014 is evidence of the fact that Shri Dhananjay Munde was convicted under section 89(1)(i) of the Finance Act, 1994. The Commission also pointed out that no order was produced before it, of any competent authority, declaring that Shri Dhananjay Munde, Member of Maharashtra Legislative Council is convicted under the said provision of law.

8. The Commission has ruled out the contention of the petitioner that Shri Dhananjay Munde, Member of Maharashtra Legislative Council is liable to be disqualified for violation of Rules 250, 253 and 254 of the Maharashtra Legislative Council Rules, 2009 as the same do not prescribe conviction for violation of the provisions contained therein. Also, there is no statutory law that provides for disqualification of a Member of the Maharashtra Legislative Council on the ground of violation of the Maharashtra Legislative Council Rules.

9. In view of the foregoing findings and analysis, the Commission opined that, Shri Dhananjay Panditrao Munde, Member of the Maharashtra Legislative Council has not incurred disqualification for being a Member of the Legislative Council of Maharashtra under section 8(3) of the Representation of the People Act, 1951.

10. In accordance with the said opinion of the Election Commission of India, I pass the following order :—

Order

The petition of Adv. Ashish Giri is hereby, for the reasons stated above, dismissed.

Dated the 31st July 2017.

CH. VIDYASAGAR RAO,
Governor of Maharashtra.

क्रमांक डीआयएस.२०१७/प्र.क्र. ५५७/१७/३३,
सामान्य प्रशासन विभाग,
मादाम कामा मार्ग, हुतात्मा राजगुरु चौक,
मंत्रालय विस्तार, मुंबई ४०० ०३२,
दूरध्वनी क्रमांक : ०२२-२२०२५०५९,
दिनांक ३ ऑगस्ट २०१७.

प्रत, माहिती व योग्य कार्यवाहीसाठी अग्रेषित :-

- (१) प्रधान सचिव, महाराष्ट्र विधानमंडळ सचिवालय, विधान भवन, मुंबई.
- (२) निवडनस्ती.

अ. ना. वळवी,
उप सचिव व सह मुख्य निवडणूक अधिकारी,
महाराष्ट्र राज्य.